Office Supreme Court, U.S.
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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 485

FEDERAL TRADE COMMISSION,
Petitioner,
vs.
STANDARD OIL COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF IN BEHALF OF NATIONAL CONGRESS OF PETROLEUM RETAILERS, INC., AND RETAIL GASOLINE DEALERS ASSOCIATION OF MICHIGAN, INC., AS AMICI CURIAE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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December 11, 1956.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 465.

FEDERAL TRADE COMMISSION,

Petitioner,

vs.

STANDARD OIL COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF IN BEHALF OF NATIONAL CONGRESS OF PETROLEUM RETAILERS, INC., AND RETAIL GASOLINE DEALERS ASSOCIATION OF MICHIGAN, INC., AS AMICI CURIAE, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Standard Oil Company, respectfully prays this Court to deny the motion with supporting brief filed in behalf of National Congress of Petroleum Retailers, Inc. and Retail Gasoline Dealers of Michigan, Inc., and to exclude those papers from the docket of this case as filed in violation of this Court's Rules of Practice governing *amici curiae* and the contents of their briefs.

1. The Motion Was Not Timely Filed.

Unless this Court's Rules of Practice are construed to sanction the hit-and-run tactic of addressing the Court too late to permit effective rebuttal, the instant motion was clearly not submitted "a reasonable time" prior to the consideration of the petition for certiorari.

Although the petition was filed on September 28, the motion was not filed until November 26, only two days before Respondent's brief in opposition to certiorari was due and had already been printed. While its ostensible purpose is the presentation of issues not adequately covered by the Solicitor General's petition for certiorari, it was filed fully fifty-eight days after that petition—on the eve of the extended deadline for Respondent's brief in opposition to certiorari.

But Rule 42(1) provides that a prospective *amicus* who fails to secure the consent of both parties must submit his motion "a reasonable time prior to the consideration" of the petition for certiorari. Certainly fifty-eight days after filing of the petition and only two days before the due date of Respondent's brief is unreasonable and suggests a design to foreclose any response.

2. The Supporting Brief Also Flouts the Rules.

Although purporting throughout to speak from the evidence and record, the brief is bare of a single record citation where the truth of its numerous allegations can be checked. According to Rules 42(5) and 40(2), briefs may refer to the record of a case only if citing the pertinent record page number and must be especially "specific" when referring to "a part of the evidence."

Moreover, the brief hardly pretends to address itself to the bearing of the decision of the Court of Appeals on the

facts at bar. Instead, the brief resorts to insinuation and innuendo against Respondent—and other oil companies not party to this proceeding—to which there is no opportunity for reply. Such undocumented accusations that stray far beyond the issues of this case are surely barred by this Court's directive against "burdensome, irrelevant, immaterial and scandalous matter." Rule 40(5).

Respectfully submitted,

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